

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES J. BENNEK,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:19-930
	:	
v.	:	(MANNION, D.J.)
	:	(SAPORITO, M.J.)
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant	:	

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge Saporito, ([Doc. 15](#)), which recommends that the plaintiff James J. Bennek’s (“Bennek”) letter, ([Doc. 14](#)), be construed as a notice of dismissal pursuant to [Federal Rule of Civil Procedure 41\(a\)\(2\)](#), and the action be dismissed. No objections to the Report have been filed. Based on the court’s review of the record, the Report is **ADOPTED IN ITS ENTIRETY**, Bennek’s letter will be construed as a notice of dismissal, and the action is **DISMISSED**.

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72\(b\)](#) advisory committee’s note; see *also* [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (M.D.Pa.

2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. L.R. 72.31.

On May 20, 2019, Bennek, proceeding *pro se*, filed a complaint against the Commissioner of Social Security (“Commissioner”), seeking to appeal a final administrative order of the Secretary of Health and Human Services, which denied his claim for a period of disability benefits. (Doc. 1). A standing order was issued on May 31, 2019, which, among other things, informed Bennek that he must file and serve a brief in support within forty-five days of the Commissioner’s answer. On August 16, 2019, the Commissioner filed an answer denying all allegations in the complaint. (Doc. 8). Thus, Bennek’s brief in support was due on October 1, 2019; however, Bennek failed to file one. Judge Saporito issued an order on October 10, 2019, directing Bennek to file his brief by October 30, 2019. (Doc. 12). Bennek again failed to do so and, on November 7, 2019, Judge Saporito issued an order affording Bennek a final opportunity to file a brief by November 27, 2019. (Doc. 13).

On November 18, 2019, Bennek sent a letter indicating that he could not find an attorney and therefore was “going to drop [his] appeal,” since he

did not know how to write a brief.¹ (Doc. 14). On November 19, 2019, Judge Saporito issued his Report, which recommends that the letter be construed as a notice of dismissal pursuant to Rule 41(a)(2) and that the case be dismissed.

Having reviewed the entire Report of Judge Saporito, as well as the record in this matter, the court agrees with the sound reasoning which led him to his recommendation. As such, the court adopts the Report of Judge Saporito as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) the Report of Judge Saporito, (Doc. 15), is
ADOPTED IN ITS ENTIRETY;
- (2) Bennek's letter, (Doc. 14), is construed as a notice
of dismissal;
- (3) this action is **DISMISSED**; and
- (4) the Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: December 10, 2019

19-930-01

¹ While docketed as a letter, the document was an email, which Bennek sent to consents@pamd.uscourts.gov—the email address where Bennek was directed to send the statement of Consent to Proceed Before a Magistrate Judge form. (Doc. 10).